

STATE OF MICHIGAN
COURT OF APPEALS

In re TONG, Minors.

UNPUBLISHED
November 27, 2018

No. 343356
Macomb Circuit Court
Family Division
LC No. 2016-000298-NA

Before: JANSEN, P.J., and K. F. KELLY and BORRELLO, JJ.

PER CURIAM.

Respondent appeals as of right the order terminating her parental rights to her minor children NYT and SEGT (the minor children). Respondent’s parental rights were terminated pursuant to MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), (g) (failure to provide proper care and custody),¹ and (j) (reasonable likelihood that children will be harmed if returned to parent). We affirm.

I. STATUTORY GROUNDS

Respondent first argues that the trial court clearly erred by finding that statutory grounds to terminate her parental rights existed pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We disagree.

This Court reviews the trial court’s findings regarding statutory grounds for clear error. MCR 3.977(K); *In re Frey*, 297 Mich App 242, 244; 824 NW2d 569 (2012). “A finding is

¹ MCL 712A.19b(3)(g) has been amended, effective June 12, 2018. See 2018 PA 58. Under the version of the statute in effect during the lower court proceedings, the trial court could terminate parental rights if “[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.” MCL 712A.19b(3)(g). Under the new version of the statute, the trial court may terminate parental rights if “[t]he parent, although, in the court’s discretion, financially able to do so, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.” MCL 712A.19b(3)(g) as amended by 2018 PA 58.

clearly erroneous if the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.” *In re Gonzales/Martinez*, 310 Mich App 426, 430-431; 871 NW2d 868 (2015) (citation and quotation marks omitted). This Court “must defer to the special ability of the trial court to judge the credibility of witnesses.” *In re Gach*, 315 Mich App 83, 93; 889 NW2d 707 (2016).

Petitioner has the burden of showing that the allegations in the petition establish a statutory basis for termination by clear and convincing evidence. *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). Under MCL 712A.19(b)(1), the trial court must make findings of fact, state conclusions of law, and specify the statutory basis for an order terminating a respondent’s parental rights. The trial court properly found that there were statutory grounds to terminate respondent’s parental rights pursuant to MCL 712A.19b(3)(c)(i). The trial court may terminate parental rights if “[t]he parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds . . . [that t]he conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.” MCL 712A.19b(3)(c)(i).

The trial court terminated respondent’s parental rights pursuant to MCL 712A.19b(3)(c)(i) because more than 182 days had elapsed since the initial dispositional order was issued and respondent failed to rectify the conditions that led to the removal of the minor children. In making its determination, the trial court considered respondent’s failure to complete anger management therapy and the fact that she never received medical treatment to address her bipolar disorder or antisocial personality disorder. Respondent failed to attend substance abuse therapy and her drug screens indicated that she was abusing her prescription medications. Respondent also tested positive for morphine even though she did not have a prescription for morphine. Additionally, although it appears that respondent currently has housing and employment, her situation is unstable and dependent on another person, Roger Frail, and the status of her housing situation is unclear. For example, while respondent produced a copy of a lease with Frail to DHHS staff, the document did not bear respondent’s signature. Given that respondent did not remedy the conditions that led to the removal of the minor children, the trial court did not clearly err when it found that there were statutory grounds to terminate respondent’s parental rights pursuant to MCL 712A.19b(3)(c)(i).

Although “[o]nly one statutory ground need be established by clear and convincing evidence to terminate” respondent’s parental rights, *In re Ellis*, 294 Mich App at 32, there was also clear and convincing evidence to support the trial court’s determination that there was a statutory basis to terminate respondent’s parental rights under MCL 712A.19b(3)(g). MCL 712A.19b(3)(g) authorizes the termination of parental rights if “[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.”

In determining that there was a statutory basis to terminate respondent’s parental rights pursuant to MCL 712A.19b(3)(g), the trial court considered respondent’s unstable lifestyle. The minor children were removed from respondent’s care and custody because respondent overdosed on prescription medication, pleaded guilty to domestic violence after she pushed her husband,

PYT, down a flight of stairs, and her home lacked working utilities. At one point, the children lived in motels and on campgrounds because respondent refused to pay a utility bill. Respondent was also unavailable to provide consent when one of the minor children needed important and necessary medical care. Thus, the trial court found that respondent failed to provide the minor children with proper care and custody within the meaning of MCL 712A.19b(3)(g). Further, there is no reasonable likelihood that respondent will be able to provide the minor children with proper care and custody within a reasonable time given that respondent now lives with a friend in New York, her housing and employment situation are dependent on that friend, and her issues with substance abuse, anger management, and mental health continue to persist. Therefore, the trial court did not clearly err in finding that there was clear and convincing evidence to terminate respondent's parental rights under MCL 712A.19b(3)(g).

Additionally, there was clear and convincing evidence to support the termination of respondent's parental rights pursuant to MCL 712A.19b(3)(j). Under MCL 712A.19b(3)(j), a trial court may terminate parental rights if "[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent." Respondent continues to have untreated issues with mental health, anger management, and substance abuse. Respondent had previously pleaded guilty to domestic violence, and during the lower court proceedings in this case, she exhibited angry and verbally aggressive behavior to DHHS staff. Based on respondent's previous history with Child Protective Services (CPS) and her behavior since the minor children were removed from her care, there is a reasonable likelihood that the minor children would be harmed if returned to her care. Therefore, the trial court did not clearly err by finding that there was clear and convincing evidence to terminate respondent's parental rights under MCL 712A.19b(3)(j).

II. BEST INTERESTS

Respondent next argues that the trial court clearly erred in finding that the termination of her parental rights is in the best interests of the minor children. We disagree.

This Court reviews a trial court's decision regarding a child's best interests for clear error. *In re Medina*, 317 Mich App 219, 226; 894 NW2d 653 (2016). See also MCR 3.977(K). A finding is clearly erroneous if this Court is left with a "definite and firm conviction that a mistake has been made." *In re LaFrance Minors*, 306 Mich App 713, 723; 858 NW2d 143 (2014). Additionally, this Court must defer to the trial court's "special ability" to evaluate the credibility of witnesses. *Id.*

"Even if the trial court finds that [DHHS] has established a ground for termination by clear and convincing evidence, it cannot terminate the parent's parental rights unless it also finds by a preponderance of the evidence that termination is in the best interests of the children." *In re Gonzales/Martinez*, 310 Mich App at 434, citing MCL 712A.19b(5) and *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). The best-interests analysis focuses on the child rather than the parent. *In re Schadler*, 315 Mich App 406, 411; 890 NW2d 676 (2016). To determine whether the termination of a parent's rights is in the child's best interests, "[t]he trial court should weigh all the evidence available[.]" *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). Factors that the trial court may consider in making this determination include "the child's bond to the parent, the parent's parenting ability, the child's need for permanency,

stability, and finality, and the advantages of a foster home over the parent's home." *Medina*, 317 Mich App at 237, quoting *In re White*, 303 Mich App at 713-714. A parent's history of mental health issues and substance abuse are also proper considerations. *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001).

The trial court properly determined that the termination of respondent's parental rights was in the best interests of the minor children. Respondent's lack of participation in the family treatment plan is ample evidence that the best interests of her minor children are not her top priority. Respondent did not complete her family treatment plan even though her participation was critical to regain custody of her children. Moreover, respondent missed drug screens, therapy appointments, and was nowhere to be found when her young daughter required medically-necessary surgery, which then required a court order. While respondent asserts in her brief on appeal that her inconsistent visitation with the minor children can be attributed to her incarceration, the record reflects that respondent missed multiple parenting visits even when she was not incarcerated. When respondent did attend parenting visits, she upset NYT by telling him that he would be returning to her care even though it was not possible at the time.

Respondent's persistent and unresolved issues with substance abuse provide further support for the trial court's determination that it is in the best interests of the minor children to terminate her parental rights. Respondent admitted that her parental rights to three other children were previously terminated because she was addicted to crack cocaine. When faced with another termination of her parental rights, respondent did not complete a substance abuse program and could not explain why her drug screens indicated that she was abusing her prescription medications. Respondent also lacked an explanation as to why her drug screen tested positive for morphine when she did not have a prescription for morphine. Given the young ages of the minor children, it is imperative that the minor children live with a parent who does not abuse drugs or prescription medications.

Regarding the emotional connection between respondent and the minor children, Shania Merriweather, a foster care worker, testified that although the minor children recognize respondent as their mother, they did not share a bond with respondent. In Merriweather's opinion, respondent has not provided the minor children with emotional or financial support since the minor children were removed from respondent's care. Jennifer Rein, a CPS worker, also testified that the minor children have been doing well since being removed from respondent's care and placed with their maternal aunt. NYT was in school and progressing well, and SEGT was much healthier after her surgery.

Respondent's lack of stable housing and employment also demonstrate that it is in the best interests of the minor children to terminate her parental rights. As discussed, respondent's living and employment situations lack stability where she is dependent on another person and where her housing situation in particular is not clear. Such a situation poses significant danger to two young children. Accordingly, the trial court did not clearly err by finding that it was in the best interests of the minor children to terminate respondent's parental rights.

Affirmed.

/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly
/s/ Stephen L. Borrello